IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

STATE OF ARKANSAS ..... *Petitioner*

vs.

FARM CREDIT SERVICES OF CENTRAL ARKANSAS, PCA; FARM CREDIT SERVICES OF WESTERN ARKANSAS, PCA; EASTERN ARKANSAS PRODUCTION CREDIT ASSOCIATION; and DELTA PRODUCTION CREDIT ASSOCIATION ..... *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

DOES THE ~~DOCTRI~~NE OF INTERGOVERNMENTAL TAX IMMUNITY PROHIBIT A STATE FROM TAXING INCOME AND SALES OF PRODUCTION CREDIT ASSOCIATIONS, STATUTORILY DESIGNATED AS "FEDERAL INSTRUMENTALITIES," WHEN 12 U.S.C. § 2077 SPECIFICALLY ADDRESSES THE ISSUE OF TAXATION OF PRODUCTION CREDIT ASSOCIATIONS?

LIST OF PARTIES

The parties to this proceeding are as follows: The Petitioner is the State of Arkansas. The Respondents are four Production Credit Associations chartered by the Farm Credit Association, including Farm Credit Services of Central Arkansas, PCA; Farm Credit Services of Western Arkansas, PCA; Eastern Arkansas Production Credit Association; and Delta Production Credit Association.

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OPINIONS DELIVERED BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 76 F.3d 961 (1996), and is printed in its entirety at Appendix A hereto. The Order of the United States District Court of the Eastern District of Arkansas, Western Division, is unreported and is printed in its entirety at Appendix B hereto.

GROUNDS UPON WHICH JURISDICTION IS INVOKED

The Opinion of the United States Court of Appeals for the Eighth Circuit was delivered on February 23, 1996 (see Appendix A). This Petition is filed within the time allowed by law. The jurisdiction of this Court is invoked pursuant to 28 U.S.C § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Article VI, Clause 2 of the United States Constitution provides in pertinent part:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land . . .

STATUTORY PROVISIONS INVOLVED

[Pertinent text is set forth in Appendix C as provided in Rule 14.1(f) of the Rules of the Supreme Court.]

STATEMENT OF THE CASE

Petitioner, the State of Arkansas, through the Department of Finance and Administration, is charged with the duty of administration of state tax law, including the assessment and collection of state tax. Respondents are four Production Credit Associations chartered by the Farm Credit Association who filed an action in the United States District Court for the Eastern District of Arkansas seeking a declaratory judgment that, as federal instrumentalities, they are exempt from state and local taxes, including income tax and gross receipts (sales) tax, and an injunction against the imposition or assessment of such taxes by the State of Arkansas. The District Court's jurisdiction was invoked pursuant to 28 U.S.C. § 1331 and Article Six, Clause Two of the Constitution of the United States.

The District Court agreed with Respondents that because Respondents are federal instrumentalities, there arises an implied immunity from state and local taxation, that any waiver from such immunity must be express, and that Petitioners had not proven that such a waiver existed, and entered an Order on March 7, 1995, granting Respondents' Motion for Summary Judgment. Petitioner appealed this decision to the United States Court of Appeals for the Eighth Circuit.

On February 23, 1996, the Court of Appeals for the Eighth Circuit affirmed the decision of the District Court, over the dissent of Judge Loken.

ARGUMENT

(REASONS FOR ALLOWANCE OF THE WRIT)

A CONFLICT EXISTS BETWEEN THE DECISION OF THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT IN THIS CASE AND DECISIONS OF THIS COURT REGARDING THE APPLICATION OF THE CONSTITUTIONAL DOCTRINE OF IMPLIED IMMUNITY OF FEDERAL INSTRUMENTALITIES FROM STATE TAXATION WHERE THE ISSUE OF IMMUNITY FROM STATE TAXATION MAY BE DECIDED BY STATUTORY INTERPRETATION OF 12 U.S.C. § 2077.

The Petitioners submit that there is a conflict between the decision of the Court of Appeals for the Eighth Circuit and decisions of this Court regarding the application of the Constitutional doctrine of implied immunity of federal instrumentalities from state taxation where the issue of immunity from state taxation may be decided by statutory interpretation of 12 U.S.C. § 2077. In its decision, the Eighth Circuit Court of Appeals stated:

> [T]he current version of § 2077 acknowledges that because of the Supremacy Clause express exemption of the PCAs from state taxation in the earlier statutes constituted unnecessary surplus language. Where Congress is silent, the tax immunity of federal instrumentalities from state taxation is implied. (citations omitted) There is no provision in any statute, including 12 U.S.C. § 2077, which indicates an intent on the part of Congress to waive the PCAs' tax immunity as federal instrumentalities. Therefore, the PCAs, as instrumentalities of the United States, are immune to state taxation, and we affirm the district court's judgment to that effect. (P. App. A-6)

The following discussion will show that this Court should grant this petition in order to resolve this conflict in favor of the Petitioners.

The first step of the Court of Appeals' analysis is based upon the premise that, as federal instrumentalities, PCAs "implicitly" merit federal immunity from state taxation. As authority for this finding, the Court of Appeals relies upon this Court's decisions beginning with *McCulloch v. State of Maryland*, 4 Wheat 316 (1819); *Federal Land Bank of Wichita v. Bd. of County Comm'rs*, 368 U.S. 146, 82 S.Ct. 282, 7 L.Ed.2d 199 (1961); and *United States v. New Mexico*, 455 U.S. 720, 102 S.Ct. 1373, 71 L.Ed.2d 580 (1982).

Even though the general constitutional principle of intergovernmental tax immunity of federal instrumentalities, as first articulated in *McCulloch*, renders the United States exempt from state and local taxation, *Feaeral Land Bank of Wichita v. Bd. of County Comm'rs*, upon which the Court of Appeals relies in part, advocates deference to Congressional authority rather than judicially implied constitutional immunity.[1]

In 1982, in *New Mexico*, 455 U.S. 720 (1982), the Court reflected upon the "confusing nature of our precedents" regarding the immunity doctrine and concluded that "tax immunity is appropriate in only one circumstance: when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." *Id.*, at 735.

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[1]In *Federal Land Bank of Wichita v. Board of County Commissioners*, 368 U.S. 146 (1961), the Court considered the statutory exemption from taxation granted to Federal Land Banks and held that the statute conferred express immunity from state personal property tax, making it unnecessary to consider whether the doctrine of implied immunity applied.

Twenty years earlier, in *Federal Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95 (1941), the Court examined not only the express statutory exemption from tax granted to Federal Land Banks, but also the legislative history of the statute, in order to reach its decision.

The Court of Appeals found *New Mexico* inapplicable to "Congressionally created federal instrumentalities like PCAs," apparently implying that the *New Mexico* analysis applies only to entities which have not been declared to be federal instrumentalities. (P. App. A-6) While the factual basis for the *New Mexico* decision involves federal contractors who are not designated by statute as "federal instrumentalities," the analysis is not inapplicable to an entity such as a PCA.

PCAs were created by the Farm Credit Act of 1933, Pub. L. No. 73-98; 48 Stat. 257 (1933), which established the Farm Credit Administration, an independent agency in the executive branch of the Government, comprised of the thirteen-member Federal Farm Credit Board who hired a full-time Governor and other officers and employees, with responsibility to oversee the banks and associations comprising the system. This legislation incorporated the provisions regarding the associations created in 1916 and 1923, including Federal land banks, and also created Banks for Cooperatives. The PCA's purpose was to obtain short- and intermediate-term loans from Federal intermediate credit banks in order to facilitate the delivery of credit services to farmers and ranchers. The Banks for Cooperatives were to make loans and provide credit services to agricultural, aquatic, and rural utility cooperatives. At their inception, the stock in PCAs was owned by both the government and by farmers and ranchers.

The Farm Credit Act of 1971, Pub. L. No. 92-181, 85 Stat. 583 (1971), the purpose of which, according to the legislative history, was to rewrite, modernize, and streamline the statutory authority of the Farm Credit System, repealed most of the existing statutory authority for the Farm Credit System in the rewriting process. The resulting Farm Credit System consisted of twelve Farm Credit Districts, in each of which was located three System banks: a Federal land bank, a Federal intermediate credit bank, and a bank for cooperatives, as well as from 21 to 60 PCAs. Prior to the 1971 Act, all of the Government capital in all of the 441 PCAs had been retired, and the PCAs were completely owned by their members. *See*

generally, H. R. Rep. No. 593, 92d Cong., 1st Sess., *reprinted in* 1971 U.S. Code Cong. & Admin. News 2091.

In the early 1980s the depressed agricultural economy resulted in financial stress on the Farm Credit System. The Committee on Agriculture began consideration of amendments to the Farm Credit System legislation to address these problems. One of the major purposes of the amendments was to make the Farm Credit Administration an arm's-length regulator of the System and to remove the day-to-day participation in management. *See generally*, H. R. Rep. No. 425, 99th Cong., 1st Sess., *reprinted in* 1985 U.S. Code Cong. & Admin. News 2587.

The Farm Credit Act and amendments confirm the separation between Farm Credit Systems institutions, particularly PCAs, and the federal government. Each PCA is organized and owned by the borrowers who are farmers and ranchers, not the government, and is controlled by an independent board of directors elected by the members. 12 U.S.C. §§ 2071, 2072, 2073. Although PCAs are subject to regulation by the Farm Credit Administration, the stated objective of the Farm Credit System is to encourage the participation of farmer- and rancher-borrowers in the management, control, and ownership of a farm credit system, rather than supervising day-to-day System management. 12 U.S.C. §§ 2001, 2002.

The System is a "Government sponsored entity;" however, System entities are not Government owned or controlled. System debt securities are not obligations of, or guaranteed by, the United States or any agency or instrumentality thereof, other than the System banks, one of which a PCA is not. All of the Farm Credit Administration's administrative expenses are paid by the System entities rather than the Government. Farm Credit Administration, 1994 Annual Report (1995).

Various jurisdictions have concluded that PCAs are more like private corporations than federal agencies for various

purposes. *See generally, Hanna v. Federal Land Bank Association of Southern Illinois,* 903 F.2d 1159 (7th Cir. 1990) (federal land bank and production credit associations held private employer without sufficient governmental involvement to constitute federal agencies exempt from jury trial in action by former employee); *Birbeck v. Southern New England Production Credit Association,* 606 F.Supp. 1030 (D.Conn. 1985) (production credit association considered private entity rather than governmental agency for purposes of invoking federal due process clause).

Although the above cited cases address federal instrumentality status of PCAs for purposes other than taxation, they support the proposition that PCAs are entities separate and distinct from the federal government in many respects, and that federal regulation alone is not sufficient to connect a PCA so closely to the Government that it cannot be viewed as a separate entity.

The Internal Revenue Service ruled that a PCA is not an arm of the government for purposes of federal income taxation.[2]

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[2]Rev. Rul. 84-109, 1984-2 C.B. 7 states, in pertinent part:

An organization that is designated as an instrumentality by statute will not be considered an instrumentality for investment credit purposes if it does not act as an arm of the government, because such treatment as an instrumentality would be contrary to Congressional intent for the instrumentality exclusion. . . . PCAs originally served a governmental function, by making loans available regardless of profit potential. In order to facilitate this function the PCAs were made instrumentalities of the United States and were given an exemption from both federal and local taxation. However, some PCAs, such as the one in this case, are now totally controlled by private owners, perform no substantial governmental functions and operate as profit seeking financial institutions in competition with private banks and savings and loans. These PCAs are financially autonomous and are not funded by the federal government. They are not subject to substantial government control. There is no tax exemption for the PCA described in the instant situation. . . . Thus, the description of these PCAs as federal instrumentalities does not reflect their true economic function and status and therefore is not determinative for purposes of section 48(a)(5) of the Code.

Cases decided subsequent to *New Mexico* support the principle originally articulated in that opinion. *South Carolina v. Baker,* 485 U.S. 505 (1988); *United States v. California,* 507 U.S. 746, 113 S.Ct. 1784, 123 L.Ed.2d 528 (1993). In *California State Board of Equalization v. Sierra Summit, Inc.,* 490 U.S. 844 (1989), applying its analysis to a Bankruptcy Trustee, the Court stated, "Although Congress can confer an immunity from state taxation, (citations omitted) we have stated that '[a] court must proceed carefully when asked to recognize an exemption from state taxation that Congress has not clearly expressed'." *Id.,* at 851-52.

In the absence of an express statutory exemption, the Court concluded in *Department of Employment v. United States,* 385 U.S. 355 (1966) that the Red Cross was an instrumentality of the United States for purposes of immunity from state taxation, based, in part, upon its structure and functions and in recognition that the President and the Congress have recognized the "Red Cross' status virtually as an arm of the Government." *Id.,* at 359-360.

Based on the structure and stated objectives of the Farm Credit System and the foregoing cases, production credit associations are not so closely connected to the federal government as to confer upon them immunity from state taxation, and the designation of a PCA as a federal instrumentality does not automatically exempt a PCA from all state taxation.

The second step of the Court of Appeals' analysis is that 12 U.S.C. § 2077 contains no express waiver of exemption from state taxation, and where Congress is silent, the tax immunity of federal instrumentalities is implied, relying on *Graves v. New York,* 306 U.S. 466 (1939).

First, the Court of Appeals' reliance on *Graves* is misplaced,[3] but, more importantly, the Court of Appeals refused to interpret the statute.

12 U.S.C.A. § 2077, titled "Taxation" and codified within "Part A-Production Credit Associations" of Chapter 23-Farm Credit System of Title 12, provides:

> Each production credit association and its obligations are instrumentalities of the United States and as such any and

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[3]In *Graves v. New York*, 306 U.S. 466 (1939), the Court held that, although as an instrumentality the Home Owners' Loan Corp itself and its bonds are exempt from state taxation, the salary of its employees was not statutorily or constitutionally exempt. The Court clearly indicated that,

> [T]he silence of Congress, when it has authority to speak may sometimes give rise to an implication as to the Congressional purpose. The nature and extent of that implication depend upon the nature of the Congressional power and the effect of its exercise. But there is little scope for the application of that doctrine to the tax immunity of governmental instrumentalities. The constitutional immunity of either government from taxation by the other, where Congress is silent, has its source in an implied restriction upon the powers of the taxing government. So far as the implication rests upon the purpose to avoid interference with the functions of the taxed government or the imposition upon it of the economic burden of the tax, it is plain that there is no basis for implying a purpose of Congress to exempt the federal government or its agencies from tax burdens which are unsubstantial or which courts are unable to discern. Silence of Congress implies immunity no more than does the silence of the Constitution. It follows that when exemption from state taxation is claimed on the ground that the federal government is burdened by the tax, and Congress has disclosed no intention with respect to the claimed immunity, it is in order to consider the nature and effect of the alleged burden, and if it appears that there is no ground for implying a constitutional immunity, there is equally a want of any ground for assuming any purpose on the part of Congress to create an immunity.

Id., at 479-480.

> all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority, except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder.

Applying the principles of statutory construction to a statute which directly addresses the taxation of PCAs is more appropriate and is in agreement with the practice of this Court to decide issues of statutory interpretation rather than deciding the constitutional question. *Clark v. Jeter*, 486 U.S. 456, 470 (1988).

The Court employed the principle of statutory construction to determine, in *United States v. Wells Fargo Bank*, 485 U.S. 351 (1988), by examination of not only the statutory language but also the legislative history of the applicable statute, that Project Notes were not exempt from estate tax.

In 1933, upon the creation of PCAs, Congress granted them an express exemption from state taxation, including their property and income; however, in the same statute Congress waived that exemption when the Government no longer owned any of the stock in the PCA.[4]

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[4]The statute which addressed the taxation of PCAs, as well as that of several other Farm Credit entities, Farm Credit Act of 1933, Pub. L. No. 73-98, § 63, 48 Stat. 257, 267, read as follows:

> The Central Bank for Cooperatives, and the Production Credit Corporations, Production Credit Associations, and Banks for Cooperatives, organized under this Act, and their obligations, shall be deemed to be instrumentalities of the United States, and as such, any and all notes, debentures, bonds, and other such obligations issued by such banks, associations, or corporations shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority. *Such* banks, *associations*,

The Farm Credit Act of 1971 repealed the existing farm credit legislation and rewrote the Farm Credit Act. The existing tax status of PCAs was reenacted under the PCA section of the bill (Sec. 2.17), with little change in the language of the statute other than the removal of the reference to associations other than PCAs. *See generally*, H. R. Rep. No. 593, 92d Cong., 1st Sess., reprinted in 1971 U.S. Code Cong. & Admin. News 2091, 2111. The express exemption from taxation and the waiver of exemption from taxation was preserved. Farm Credit Act of 1971, Pub. L. No. 92-181, § 2.17, 85 Stat. 583, 602 (1971).

Decisions that occurred during the period following the retirement of all PCA stock held by the Government, while not decided under current law, are indicative of the clear statutory waiver of the exemption. *See generally, Woodland Production Credit Association v. Franchise Tax Board*, 225 CA 2d 293, 37 Cal. Rptr. 231 (1964) (statutory waiver of exemption from taxation of PCAs permits taxation of the corporation itself; thus PCA is not exempt from California franchise tax which is a tax on the income of the corporation); *Columbus Production Credit Association v. Bowers*, 173 Ohio St. 97, 180 N.E.2d 1 (1962), cert. den. 371 U.S. 826, 83 S.Ct. 47, 9 L.Ed.2d 65 (production credit association held not exempt from Ohio

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[4] continued

and corporations, *their property, their franchises, capital, reserves, surplus,* and *other funds, and their income, shall be exempt from all taxation* now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such banks, associations, and corporations shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. *The exemption provided herein shall not apply with respect to any Production Credit Association or its property or income after the stock held in it by the Production Credit Corporation has been retired,* or with respect to the Central Bank for Cooperatives, or any Production Credit Corporation or Bank for Cooperatives, or its property or income after the stock held in it by the United States has been retired. (emphasis added)

franchise tax; exemption from state taxation waived by Congress in provision that exemption will not apply after the stock in the PCA held by the governor has been retired); *Baker Production Credit Association v. State Tax Commission*, 421 P.2d 984 (Ore. 1966) (Each PCA became subject to state taxation when the government ownership of its stock ended).

The Farm Credit Amendments Act of 1985, Pub. L. 99-205, 99 Stat. 1678, 1705 (1985) amended the section which addressed the taxation of PCAs by "striking out the last two sentences of section 2.17."[5] This amendment was included in Section 205 which "contains numerous technical and conforming amendments to the provisions of the Farm Credit Act of 1971 affected by changes in the basic powers, duties and authorities of the Farm Credit Administration," and which deletes references to the Governor of the Farm Credit Administration, which position was abolished by the amendments. H.R. Rep. No. 425, 99th Cong., 1st Sess. *reprinted in* 1985 U.S. Code Cong. & Admin. News 2587, 2615.

The amendment to the statute thus removed both the express exemption and the express waiver of exemption,

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[5] The sentences, immediately before the amendment striking them, read:

> Such associations, their property, their franchises, capital, reserves, surplus, and other funds, and their income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority, except that interest on the obligations of such association shall be subject only to Federal income taxation in the hands of the holder thereof pursuant to Public Debt Act of 1941 (31 U.S.C. 742(a)) and except any real and tangible personal property of such associations shall be subject to Federal, State, Territorial, and local taxation to the same extent as similar property is taxed. The exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the production credit associations is held by the Governor of the Farm Credit Administration.

Pub. L. 92-181, Title II, Part B, § 2.17, 85 Stat. 602.

leaving, with only very minor changes, the current section 2077.[6] While this provision exempts the notes, debentures, and obligations issued by the PCA from state taxation, it does not exempt the PCA itself from all state taxation, as interpreted by both the District Court and the Court of Appeals.

It is apparent that the decision of the Eighth Circuit Court of Appeals with regard to the immunity of Production Credit Associations from state taxation was decided in a way that conflicts with the fundamental rule of the Court that issues should be decided upon principles of statutory construction rather than upon constitutional grounds. Consequently, it is imperative that the Court grant this Petition in order to determine this issue.

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[6]An amendment in 1988 inserted a comma after "interest" and "except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder" after "authority." Pub. L. 100-399, § 401(r), 102 Stat. 998.

CONCLUSION

For the foregoing reasons, certiorari should issue to the Court of Appeals for the Eighth Circuit so that this honorable Court may review and correct the decision below.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 95-1856

Farm Credit Services of Central Arkansas, PCA; Farm Credit Services of Western Arkansas, PCA; Eastern Arkansas Production Credit Association; and Delta Production Credit Association,	★
Appellees,	★
v.	★ Appeal from the United States District
State of Arkansas	★ Court for the Eastern District of Arkansas.
Appellant.	★

Submitted: November 13, 1995

Filed: February 23, 1996

Before McMILLIAN and LOKEN, Circuit Judges and DUPLANTIER,* Senior District Judge.

DUPLANTIER, Senior District Judge:

Appellees, four Production Credit Associations (PCAs), brought suit in the United States District Court for the Eastern District of Arkansas against the State of Arkansas, seeking a declaratory judgment that they are exempt from state sales and income taxation and for an injunction prohibiting the state from imposing such taxes. The PCAs moved for summary judgment on the ground that there was no genuine issue of

*The HONORABLE ADRIAN G. DUPLANTIER, Senior United States District Judge for the Eastern District of Louisiana, sitting by designation.

material fact with respect to the issue of whether they were immune from state sales and income taxation because PCAs are statutorily declared instrumentalities of the United States and, absent express Congressional waiver, are entitled to immunity from such state taxation.

The state responded that Congressional declaration of PCAs as federal instrumentalities was insufficient to confer tax immunity and that waiver of immunity should be implied. The state further argued that it was necessary to make a factual inquiry into the governmental nature of PCAs in order to determine whether they are federal instrumentalities immune from state taxation. The District Court agreed with the PCAs and granted their motion for summary judgment.

We review the district court's grant of summary judgment de novo, and apply the same standard as applied by the district court. *Langley v. Allstate Ins. Co.*, 995 F.2d 841, 844 (8th Cir. 1993). Summary Judgment is appropriate if the record, when viewed in the light most favorable to the non-moving party, shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *see, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552-2553, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 106 S.Ct. 2505, 2510-11, 91 L.Ed.2d 202 (1986); *Langley*, 995 F.2d at 844.

I. PCAs: Federal Instrumentalities Immune from State Taxation Absent Congressional Waiver

Production credit associations are expressly termed federal "instrumentalities" in relevant statutes[1] and case law[2].

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[1]The statute regarding taxation of production credit associations expressly designates them "instrumentalities" of the United States. In full, 12 U.S.C. § 2077 states:

> Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, in-

Arkansas concedes that PCAs are federal instrumentalities, but contends that PCAs resemble private corporations, and that the structure and objectives of the PCAs within the farm credit system indicate that their connection to the federal government is not so close as to confer upon them immunity from state taxation.

Arkansas relies upon *United States v. New Mexico* to support its contention that federal instrumentalities like PCAs do not implicitly merit federal immunity from state taxation. Arkansas contends that *New Mexico* dictates that federal instrumentalities like PCAs are immune from state taxation only if, like government contractors, they are so closely connected to the Government that they "stand in the Government's shoes."[3] Arkansas thus argues that the district court's grant of summary judgment was erroneous; Arkansas should have the opportunity to present factual evidence concerning the function, control, ownership, and operation of the PCAs. We disagree.

Beginning with *M'Culloch v. State of Maryland*, 4 Wheat. 316 (1819), the Supreme Court has repeatedly[4] held that because of the Supremacy Clause of the United States Constitution, states have no power to tax federally created instrumentalities absent Congressional authorization. "[T]he

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[1]continued

> heritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority, except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder.

[2]"The PCA is an instrumentality of the United States. 12 U.S.C. § 2091 (1982)." *Rohweder v. Aberdeen Prod. Credit Assoc.*, 765 F.2d 109, 113 (8th Cir. 1985); *see Schlake v. Beatrice Prod. Credit Assoc.*, 596 F.2d 278, 281 (8th Cir. 1979).

[3]*See infra* note 5.

[4]*See, e.g., United States v. State Tax Comm'n of Miss.*, 421 U.S. 599, 605, 95 S.Ct. 1872, 1876, 44 L.Ed.2d 404 (1975); *First Agric. Nat. Bank v. State Tax Comm'n*, 392 U.S. 339, 340, 88 S.Ct. 2173, 2174, 20 L.Ed.2d 1138 (1968), *Department of Employment v. United States*, 385 U.S. 355, 360, 87 S.Ct. 464, 467, 17 L.Ed.2d 414 (1966); *see also United States v. City of Columbia*, 914 F.2d 151, 153 (8th Cir. 1990).

states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared." *Id.* at 436.

The proprietary functions and other attributes of the PCAs have no bearing on their status as federal instrumentalities immune from state taxation. The Supreme Court has made it clear that "the Federal Government performs no 'proprietary' functions. If the enabling Act is constitutional and if the instrumentality's activity is within the authority granted by the Act, a governmental function is being performed." *Federal Land Bank of Wichita v. Bd. of County Comm'rs*, 368 U.S. 146, 150-51, 82 S.Ct. 282, 286, 7 L.Ed.2d 199 (1961) (citing *Federal Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95, 102, 62 S.Ct. 1, 5, 86 L.Ed. 65 (1941)). Arkansas makes no claim that the PCAs or their activities are unconstitutional. Thus, no further review or factual development of the PCAs' functions or objectives is necessary.

Arkansas incorrectly contends that the reasoning of *United States v. New Mexico* applies to PCAs. 455 U.S. 720, 102 S.Ct. 1373, 71 L.Ed.2d 580 (1982). In *New Mexico*, the Supreme Court clarified the test for determining which government contractors merit immunity from state taxation[5]. The Court granted certiorari solely "to consider the seemingly intractable problems posed by state taxation of federal contractors." 455 U.S. at 730. The Court thus considered and discussed the objectives, functions, and ownership of the contractors in light of the clarified standard after concluding that the contractors

[5]For such government contractors, "tax immunity is appropriate in only one circumstance: when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." 455 U.S. at 735. In other words, "to resist the State's taxing power, a private taxpayer must actually 'stand in the Government's shoes'." *Id.* at 736. (citing *City of Detroit v. Murray Corp.*, 355 U.S. 489, 503, 78 S.Ct. 458, 491, 2 L.Ed.2d 441 (1958)).

were not "instrumentalities" of the United States[6]. *Id.* at 739-40. By contrast, PCAs are federal instrumentalities, clearly designated as such by federal statutes. Thus *New Mexico* is readily distinguishable as applicable to tax immunity cases involving federal contractors, not Congressionally created federal instrumentalities like PCAs[7]. Indeed, in *New Mexico*, the Court reaffirmed the rule that federal instrumentalities are exempt from state taxation[8].

II. Congress Made No Express Waiver of the PCAs' Tax Immunity.

In order to subject federal instrumentalities such as PCAs to state taxation, Congress must enact a clear waiver of their exemption. *Department of Employment v. United States*, 385 U.S. 355, 360, 87 S.Ct. 464, 467, 17 L.Ed.2d 414 (1966). "[W]here there is federal immunity from taxation, Congress must express a clear, express, and affirmative desire to waive that exemption." *Federal Reserve Bank of St. Louis v. Metrocentre Improvement Dist. #1*, 657 F.2d 183, 186 (8th Cir. 1981) (citing *United States v. City of Adair*, 539 F.2d 1185, 1189 (8th Cir. 1976), *cert. denied*, 429 U.S. 1121, 97 S.Ct. 1157,

[6]The Court also noted that the United States, the party seeking the declaratory judgment that certain advanced funding to the contractors was not taxable by New Mexico, did not claim that the contractors were federal instrumentalities. *Id.* at 725.

[7]The Ninth Circuit has also distinguished *New Mexico* for similar reasons, noting that the case applied to "mere private contractor[s]," and not to a "United States instrumentality" like the American National Red Cross. *United States v. City of Spokane*, 918 F.2d 84, 87 (9th Cir. 1990), *cert. denied*, 501 U.S. 1250, 111 S.Ct. 2888, 115 L.Ed.2d 1053 (1991).

[8]The Court began its explanation of federal tax immunity with the "one constant" in the discussion: "a State may not, consistent with the Supremacy Clause, U.S. Const., Art. VI, cl. 2, lay a tax "directly upon the United States." *Id.* at 733 (citing *Mayo v. United States*, 319 U.S. 441, 447, 63 S.Ct. 1137, 1140, 87 L.Ed. 1504 (1943)). The Court also quoted an earlier case which stated that if government contractors became "so incorporated into the government structure as to become instrumentalities of the United States," they would "thus enjoy governmental immunity." *Id.* at 736 (quoting *United States v. Boyd*, 378 U.S. 39, 48, 84 S.Ct. 1518, 1524, 12 L.Ed.2d 713 (1964)).

51 L.Ed. 571 (1977)), *aff'd*, 455 U.S. 995, 102 S.Ct. 1625, 71 L.Ed.2d 857 (1982). The only congressional enactment which currently deals with state taxation of PCAs states that all notes, debentures, and other obligations of the associations are exempt from state taxes. 12 U.S.C. § 2077 (quoted in full, *supra*). Prior versions of statutes dealing with taxation of PCAs expressly exempted their "capital, reserves, surplus, and other funds, and their income." Farm Credit Act of 1971, Pub.L. No. 92-181, § 2.17, 85 Stat. 583, 602 (1971); Farm Credit Act of 1933, Pub.L. No. 73-75, § 63, 48 Stat. 257, 267 (1933). Arkansas contends that because the current statutory provision no longer contains such additional express waiver language, Congress has waived the PCAs' exemption. The converse can be argued with greater force: the current version of § 2077 acknowledges that because of the Supremacy Clause express exemption of the PCAs from state taxation in the earlier statutes constituted unnecessary surplus language. Where Congress is silent, the tax immunity of federal instrumentalities from state taxation is implied. *See Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 480, 59 S.Ct. 595, 598, 83 L.Ed. 927 (1939).

There is no provision in any statute, including 12 U.S.C. § 2077, which indicates an intent on the part of Congress to waive the PCAs' tax immunity as federal instrumentalities. Therefore, the PCAs, as instrumentalities of the United States, are immune to state taxation, and we affirm the district court's judgment to that effect.

LOKEN, Circuit Judge, dissenting.

I respectfully dissent. It is well-established that States may not tax agencies and instrumentalities of the United States absent Congress's consent. This principle was first articulated in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), when the Court invalidated a discriminatory tax imposed on the Second Bank of the United States. Congress had not addressed the question in the statute, but the Bank's intergovernmental tax immunity was implied from the Supremacy Clause of the Constitution. *Id.* at 433.

In this century, the limit of this implied immunity has

evoked sharp debate among Supreme Court Justices. *See, e.g., First Agric. Nat'l Bank v. State Tax Comm'n*, 392 U.S. 339 (1968); *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466 (1939). But all have agreed on one principle — it is for Congress to determine (i) which Federal instrumentalities should enjoy immunity from state and local taxation, *and* (ii) the extent of that immunity. As the Court said in *United States v. City of Detroit*, 355 U.S. 466, 474 (1958):

> Wise and flexible adjustment of intergovernmental tax immunity calls for political and economic considerations of the greatest difficulty and delicacy. Such complex problems are ones which Congress is best qualified to resolve.

In no area has the Court more consistently deferred to Congress than in the many cases dealing with state and local taxation of banks and other lending institutions chartered or established under Federal law. *See First Agric. Nat'l Bank*, 392 U.S. at 341-46; *Federal Land Bank v. Board of County Comm'rs*, 368 U.S. 146 (1961); *Federal Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95 (1941); *Pittman v. Home Owners' Loan Corp.*, 308 U.S. 21 (1939). Some of these cases referred to the doctrine of implied constitutional immunity, but all were decided on the basis of careful statutory analysis. In my view, it is that principle of deference to the legislature that should guide us, not this court's potentially mischievous dictum in prior cases to the effect that "Congress must express a clear, express, and affirmative desire to waive" the implied constitutional immunity, *supra* p.5. With that essential preamble, I turn to the intricacies of the statutes here at issue.

The Farm Credit System is a nationwide network of borrower-owned cooperative lending institutions intended to serve the unique credit needs of the agricultural sector. *See* H.R. Rep. No. 425, 99th Cong., 1st Sess. 5 (1985), *reprinted in* 1985 U.S.C.C.A.N. 2587, 2591. The System began in 1916, when the Federal Farm Loan Act authorized the creation of twelve regional Federal Land Banks ("FLBs"). Pub. L. No. 64-158, § 4, 39 Stat. 360, 362 (1916). FLBs were to be partially owned and funded by the Federal government. Both the banks themselves, and their debt obligations, were given a broad

statutory exemption from state and local taxes, except real property taxes:

> [E]very Federal land bank . . . including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank. . . . [F]arm loan bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation. . . . Nothing herein shall be construed to exempt the real property of Federal . . . land banks . . . from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

Id. § 26, 39 Stat. at 380.

FLBs were only authorized to make agricultural loans secured by first mortgages on farm lands. In 1923, Congress created the Federal Intermediate Credit Banks ("FICBs") to make other types of farm loans. FICBs received the same broad statutory tax exemption as FLBs. Pub. L. No. 67-503, § 210, 42 Stat. 1454, 1459 (1923). In 1987, Congress merged the FLBs and the FICBs into Farm Credit Banks. With minor changes in statutory language, Farm Credit Banks today enjoy the same statutory tax exemption first granted FLBs in 1916. *See* 12 U.S.C. § 2023.

This case involves Production Credit Associations ("PCAs"), first created by Congress in the Farm Credit Act of 1933 to provide short-to-intermediate-term loans directly to farmers and ranchers. *See* Pub. L. No. 73-98, § 20, 48 Stat. 257, 259-60 (1933). PCAs were initially capitalized and owned entirely by the Federal government, but Congress hoped ("expected" might be too strong a word given Depression-era economic conditions) that PCA excess earnings would be used to retire the government's stock, resulting in "local institutions in which farmers are participants and owners and through which necessary credit may be provided on a safe business basis and at reasonable cost." S. Rep. No. 124, 73d

Cong., 1st Sess. 2 (1933). Congress reflected that hope in the express but limited tax exemption granted PCAs in the 1933 Act:

> Production Credit Associations . . . and their obligations, shall be deemed to be instrumentalities of the United States, and as such, any and all notes, debentures, bonds, and other such obligations issued by [PCAs] shall be exempt both as to principal and interest from all taxation . . . imposed by the United States or by any State, Territorial, or local taxing authority. [PCAs], their property, their franchises, capital, reserves, surplus, and other funds, and their income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property . . . shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. *The exemption provided herein shall not apply with respect to any [PCA] or its property or income after the stock held in it by the [United States] has been retired.* . . .

Pub. L. No. 73-98, § 63, 48 Stat. at 267 (emphasis added). This is a very different exemption than Congress granted the earlier farm credit institutions, FLBs and FICBs. Congress did not explain why it linked the PCAs' tax exemption to government ownership, and why it did not also impose that limitation on FLBs and FICBs.[1]

By the early 1960s, many PCAs were privately owned, and States began assessing various taxes, relying upon the last sentence of the above-quoted statute. Some PCAs resisted, claiming implied immunity as Federal instrumentalities. To my knowledge, every state appellate court to consider the question rejected the PCAs' position, concluding that the

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[1]The other differences in wording between the exemptions granted to FLBs and PCAs may simply reflect an evolution in drafting. The PCA form of exemption, without the critical last sentence dealing with retirement of the government's stock, is also found in the 1933 statute which created the government-owned Home Owners' Loan Corporation. *See* Pub. L. 73-43, § 4(c), 48 Stat. 128, 130 (1933).

Federal statute was express consent for state taxation of privately-owned PCAs. *See, e.g., Baker PCA v. State Tax Comm'n*, 421 P.2d 984 (Or. 1966); *Woodland PCA v. Franchise Tax Bd.*, 37 Cal. Rptr. 231 (Dist. Ct. App. 1964); *Montana Livestock PCA v. State*, 393 P.2d 50 (Mont. 1964); *Columbus PCA v. Bowers*, 180 N.E.2d 1 (Ohio), *cert. denied*, 371 U.S. 826 (1962).

By 1968 all PCAs were owned entirely by their borrower-members. *See* H.R. Rep. No. 593, 92d Cong., 1st Sess. (1971), *reprinted in* 1971 U.S.C.C.A.N. 2091, 2098. When Congress substantially rewrote these statutes in the Farm Credit Act of 1971, it left unchanged the differing exemptions granted to various System lenders. *See* Pub. L. No. 92-181, §§ 1.21, 2.8, 2.17, 3.13, 85 Stat. 583, 590, 597, 602, 608-09 (1971); H.R. Rep. No. 593, 1971 U.S.C.C.A.N. at 2107-13.[2] I suspect that PCAs operating under the 1971 Act routinely paid state and local taxes in the many States with statutes expressly taxing PCAs to the extent permitted by Federal law,[3] but the record in this case is regrettably silent on the point.

Congress again overhauled the farm credit statutes in 1985, responding to a crisis in the agricultural sector that threatened to bankrupt the System. *See generally Colorado Springs PCA v. Farm Credit Admin.*, 967 F.2d 648, 650-52 (D.C. Cir. 1992). Congress made the Farm Credit Administration a more independent regulator, led by a three-member Board instead of a Governor. To conform the statute to this new agency configuration, prior references to the Governor needed to be deleted, including one that had been added to the last sentence of the PCAs' tax exemption provision, § 2.17 of the 1971 Act. However, rather than simply delete this reference to the Governor, Congress deleted the last two sentences of § 2.17. *See* Pub. L. No. 99-205, § 205(e)(16), 99 Stat. 1678, 1705

[2]Of the other System lending institutions, Federal Land Bank Associations currently have the same exemption as Farm Credit Banks, 12 U.S.C. § 2098, while Banks for Cooperatives, first created in 1933 along with the PCAs, continue to have the same limited exemption as PCAs, 12 U.S.C. § 2134.

[3]*See, e.g.*, Ala. Code § 40-16-2; Ind. Code § 6-5-12; N.Y. City Inc. Bus. Tax § 31; N.C. Gen. Stat. § 105-102.1; S.D. Cod. Laws § 10-43-2.1; Tenn. Code Ann. §§ 56-4-401 — 03.

(1985). What remained, with minor subsequent changes,[4] was the statutory tax exemption for PCA obligations quoted in footnote 1 of the court's opinion, now codified at 12 U.S.C. § 2077.

This 1985 amendment deleted the express exemption that had been granted to a PCA and its income for so long as the PCA was Government-owned. The relevant Committee Report described this as merely a technical change. *See* H.R. Rep. No. 425 at 28-29, 1985 U.S.C.C.A.N. at 2615. Although more than the reference to the Governor was deleted, that is a logical explanation since there were *no* publicly-owned PCAs in 1985 eligible to enjoy the deleted exemption. But this court has now construed a seemingly innocuous technical amendment as instead conferring an implied grant of blanket immunity from state and local taxation. In other words, the court construes the repeal of a limited express exemption, for which no PCA remained eligible, as the grant of a far broader implied exemption. Indeed, depending upon how one applies opaque dictum in the last paragraph of *McCulloch v. Maryland*, 17 U.S. at 436, the effect of this decision may be to exempt PCAs from state and local real property taxes, an exemption broader than *any* Farm Credit institution has enjoyed in the eighty-year history of the System.[5]

[4]This section was reenacted in the Agricultural Credit Act of 1987, Pub. L. No. 100-233, § 401, 101 Stat. 1568, 1633 (1987).

[5]The court creates this uncertainty despite a 1988 colloquy between a Member of the House of Representatives and the Member who had been Chairman of the House Committee on Agriculture in 9185:

> MRS. SMITH OF NEBRASKA. Is it your understanding that although local governments are not given specific authority to levy property taxes on property owned by [PCAs], they are not prevented from doing so?
>
> MR. DE LA GARZA. Mr. Speaker, I would inform the gentlewoman from Nebraska that that is the advice of our legal counsel and certainly consistent with my understanding of the [1985] conference.

134 Cong. Rec. H 462 (daily ed. Feb. 23, 1988). Although postenactment views of individual legislators are not usually reliable indicators of legislative intent, the House in 1988 was considering whether a further technical amendment was needed to clarify that PCAs, like all other Farm Credit System banks, are subject to real property taxation. So this colloquy is quite persuasive support for my interpretation of the 1985 amendment.

If normal principles of statutory construction are applied, it is obvious to me that the technical change intended by the 1985 amendments should not be construed as having the extraordinary substantive effect urged by the appellee PCAs. Because PCAs had no exemption from state and local taxation before the 1985 amendment (other than the exemption for their obligations), they should have no exemption under the statute as amended, 12 U.S.C. § 2077. But this court concludes otherwise, adhering — in my view blindly — to "no express waiver" dicta in earlier cases that discussed the implied constitutional immunity. This decision is illogical, and it is contrary to the overriding rule, grounded in constitutional and statutory principles, that defining the extent of federal instrumentality tax immunity is a quintessentially legislative task. Accordingly, I dissent.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FARM CREDIT SERVICES OF CENTRAL ARKANSAS, PCA; FARM CREDIT SERVICES OF WESTERN ARKANSAS, PCA; EASTERN ARKANSAS PRODUCTION CREDIT ASSOCIATION; and DELTA PRODUCTION CREDIT ASSOCIATION — PLAINTIFFS

V. No. LR-C-94-394

STATE OF ARKANSAS — DEFENDANT

Filed March 6, 1995

ORDER

Plaintiffs are production credit associations chartered by the Farm Credit Association in accordance with the Farm Credit Act of 1971. In this lawsuit, plaintiffs seek declaratory judgment that they are exempt from state and local taxes and an injunction barring the State of Arkansas from imposing, assessing, or collecting taxes from them.

The defendant State of Arkansas has moved to dismiss the complaint for want of subject matter jurisdiction, for failure to state a claim and because the suit is barred by the Tax Injunction Act, 28 U.S.C. § 1341.

This Court does have subject matter jurisdiction to hear a claim for injunctive relief from a state regulation on the ground that the regulation is preempted by federal law. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). The complaint in this case does state a claim upon which relief can be granted. Plaintiffs have been denied tax exempt status by the State of Arkansas. They need not wait until taxes are assessed against them to apply to this Court for relief.

The United States Supreme Court has squarely held that the Tax Injunction Act does not apply to "suits by the United

States to protect itself and its instrumentalities from unconstitutional state exaction." *Department of Employment v. United States*, 385 U.S. 355, 358 (1966). The Motion to Dismiss is without merit, and is denied.

The plaintiffs have moved for summary judgment on the ground that they are federal instrumentalities and, as such, enjoy immunity from state and local taxation. There can be no serious dispute that the plaintiffs are federal instrumentalities. In at least three places in the United States Code, production credit associations are expressly referred to as "federal instrumentalities":

> 12 U.S.C. § 2071(a): "Each production credit association shall continue as a Federally chartered instrumentality of the United States."
>
> 12 U.S.C. § 2071(b)(7): "On approval of the proposed articles . . . the [production credit] association shall become as of such date a federally chartered body corporate and an instrumentality of the United States."
>
> 12 U.S.C. § 2077: "Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest, from all taxation . . . imposed by the United States or any State. . . ."

Furthermore, the Court of Appeals for the Eighth Circuit has specifically held production credit associations to be instrumentalities of the United States. *Rohweder v. Aberdeen Production Credit Association*, 765 F.2d 109 (1985).

The defendant argues that even if the plaintiffs are instrumentalities of the United States, that finding does not end the inquiry into plaintiffs' status as tax exempt. Defendant contends that the plaintiffs must demonstrate that they are federal instrumentalities for purposes of state taxation exemption. The defendant also argues that the plaintiffs' immunity from state taxation has been waived by Congress.

The defendant has failed to meet the plaintiffs' evidence that they are federal instrumentalities. Although the defendant complains that the plaintiffs included only some of their bylaws in support of the motion for summary judgment, the defendant has failed to offer other bylaws, or any other evidence, to indicate that the plaintiffs are not federal instrumentalities.

The defendant's argument that the plaintiffs must prove they are federal instrumentalities for purposes of exemption from state taxes is misplaced. It is true that Production Credit Associations do not enjoy all immunities of the United States, even though they are federal instrumentalities. However, implied immunity from state taxation for federal instrumentalities has been a settled niche in American jurisprudence since the early days of the Republic. Once it has been determined that the plaintiffs are federal instrumentalities, there arises an implied immunity from state and local taxation. *McCulloch v. Maryland*, 17 U.S. 316 (1819). *First Agriculture National Bank of Berkshire County v. State Tax Commission*, 392 U.S. 339 (1968).

The burden rests with the defendant to demonstrate that Congress has waived immunity from state taxation. Congress can waive tax immunity, but such waiver must be express:

> Congress must express a clear, express, and affirmative desire to waive the immunity from taxation enjoyed by a federal instrumentality.

Federal Reserve Bank of St. Louis v. Metrocentre Improvement District #1, 657 F.2d 183, 186 (8th Cir. 1981), *aff'd* 455 U.S. 995 (1982). Defendant has directed the Court to no express waiver from taxation, nor is the Court aware of any such express waiver. Thus, the defendant's only argument is that Congress has impliedly waived immunity from taxation for production credit associations. That is insufficient to sustain the burden.

Accordingly, the plaintiffs' Motion for Summary Judgment must be, and hereby is, granted. The defendant's Motion to Dismiss is denied. This case is dismissed.

DATED this 6th day of March, 1995.

/s/ Henry Woods, United States District Judge

APPENDIX C

STATUTORY PROVISIONS INVOLVED

12 U.S.C. § 2001 provides, in pertinent part:

(b) It is the objective of this chapter to continue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit, and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided.

12 U.S.C. § 2002 provides, in pertinent part:

(a) Composition The Farm Credit System shall include the Farm Credit Banks, the Federal land banks associations, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to regulation by the Farm Credit Administration.

12 U.S.C. § 2071 provides:

(a) Charter

Each production credit association shall continue as a Federally chartered instrumentality of the United States.

(b) Organization

(1) In general

Production credit associations may be organized by 10 or more farmers or ranchers or producers or harvesters of aquatic products desiring to borrow money under the provisions of this part.

(2) Articles of association

The proposed articles of association shall be forwarded to the Farm Credit Bank for the district accompanied by an agreement to subscribe on behalf of the association for stock in the bank in such amounts as may be required by the bank.

(3) Contents of articles

The articles shall specify in general terms the —

(A) objects for which the association is formed;

(B) powers to be exercised by the association in carrying out the functions authorized by this part; and

(C) territory the association proposes to serve.

(4) Signatures

The articles shall be signed by persons desiring to form such an association and shall be accompanied by a statement signed by each such person establishing eligibility to borrow from the association in which such person will become a stockholder.

(5) Copy to FCA

A copy of the articles of association shall be forwarded to the Farm Credit Administration with the recommendations of the bank concerning the need for such an association in order to adequately serve the credit needs of eligible persons in the proposed territory and whether that territory includes any area described in the charter of another production credit association.

(6) Denial of charter

The Farm Credit Administration for good cause shown may deny the charter.

(7) Approval of articles

On approval of the proposed articles by the Farm Credit Administration, and on the issuance of a charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

(8) Powers of FCA

The Farm Credit Administration shall have the power, under rules and regulations prescribed by the Farm Credit Administration or by prescribing in the terms of the charter, to —

(A) provide for the organization of the association;

(B) provide for the initial amount of stock of the association;

(C) provide for the territory within which the association's operations may be carried on; and

(D) approve amendments to the charter of the association.

12 U.S.C. § 2072 provides:

Each production credit association shall elect from the voting members of such association, a board of directors of such number, for such terms, with such qualifications, and in such manner as may be required by the bylaws of the association, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, stockholder, or agent of a System institution.

12 U.S.C. § 2073 provides:

Each production credit association shall be a body corporate and, subject to supervision by the Farm Credit Bank for the district and regulation by the Farm Credit Administration, shall have the power to —

(1) have succession until terminated in accordance with this chapter or any other Act of Congress;

(2) adopt and use a corporate seal;

(3) make contracts;

(4) sue and be sued;

(5) acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to the business of the association;

(6) operate under the direction of the board of directors of the association in accordance with the provisions of this chapter;

(7) subscribe to stock of the bank;

(8) purchase stock of the bank held by other production credit associations and stock of other production credit associations;

(9) contribute to the capital of the bank or other production credit associations;

(10) invest funds of the association as may be approved by the Farm Credit Bank under regulations of the Farm Credit Administration and deposit the current funds and securities of such with the Farm Credit Bank, a member bank of the Federal Reserve System, or any bank insured under the Federal Deposit Insurance Corporation, and may pay fees therefor and receive interest thereon as may be agreed;

(11) buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the Farm Credit System and buy from and sell to such banks, interests in loans and in other financial assistance extended and nonvoting stock, as may be authorized by the Farm Credit Bank in accordance with regulations of the Farm Credit Administration;

(12) borrow money from the Farm Credit Bank, and with the approval of such bank, borrow from and issue notes or other obligations to any commercial bank or other financial institution;

(13) make and participate in loans, accept advance payments, and provide services and other assistance as authorized in this part and charge fees therefor, and when authorized by the bank participate with one or more other Farm Credit System institutions in loans made under this subchapter or other subchapters of this chapter on the basis prescribed in section 2206 of this title;

(14) endorse and become liable on loans discounted or pledged to the Farm Credit Bank;

(15) as may be authorized by the Farm Credit Bank in accordance with regulations of the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose;

(16) prescribe, by its board of directors, its bylaws that shall be consistent with law, and that shall provide for —

(A) the classes of its stock and the manner in which such stock shall be issued, transferred, and retired; and

(B) the manner in which it is to —

(i) select officers and employees;

(ii) acquire, hold, and transfer property;

(iii) conduct general business; and

(iv) exercise and enjoy the privileges granted to it by law;

(17) provide by its board of directors for a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this chapter, define their duties, and require surety bonds or make other provisions against losses occasioned by employees, but no director shall, within one year after the date when such director ceases to be a member of the board, serve as a salaried employee of the association on the board of which he served;

(18) elect by the board of directors of the association a loan committee with power to approve applications for membership in the association and loans or participations or, with the approval of the bank, delegate the approval of applications for membership and loans or participations within specified limits to other committees or to authorized officers and employees of the association;

(19) perform any functions delegated to the association by the bank;

(20) exercise by the board of directors or authorized officers or employees of the association, all such incidental powers as may be necessary or expedient to carry on the business of the association; and

(21) operate as an originator and become certified as a certified facility under subchapter VIII of this chapter.

12 U.S.C. § 2077 provides:

> Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority, except that interest, on such obligations shall be subject to Federal income taxation in the hands of the holder.